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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/695,159	10/28/2003	Tatsuya Usami	NEC 01207 DIV2	7174
27667	7590	12/20/2004	EXAMINER	
HAYES, SOLOWAY P.C. 130 W. CUSHING STREET TUCSON, AZ 85701			LEE, HSIEN MING	
			ART UNIT	PAPER NUMBER
			2823	

DATE MAILED: 12/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/695,159

Applicant(s)

USAMI, TATSUYA

Examiner

Hsien-ming Lee

Art Unit

2823

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 14-16 is/are rejected.
- 7) ☒ Claim(s) 17 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☒ Certified copies of the priority documents have been received in Application No. 09/910,994
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

HSIEN-MING LEE
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 102803.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 10/28/03 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the Patent Number does **not match** the name, date, related class. See remark in Form 1449. It has been placed in the application file, but the information referred to therein has not been considered as to the merits. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609 ¶ C(1).

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 14-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,514,852. Although the conflicting claims are not identical, they are not patentably distinct from each other because the

Art Unit: 2823

instant invention teaches the substantially same subject matter as that of US '852, regardless of minor obvious wording variation.

US '852 claims not only **all** limitations as recited in claim 14 of the instant invention but also further claims that the first through third hard masks are **consecutively formed** and having **different etching rates** in an etching condition (col. 10, lines 28-31), which is equivalent to the subject matter of claim 16 of the instant invention.

Therefore, it would have been obvious to one of the ordinary skill in the art, at the time of the invention was made, to comprehend that claims 14 and 16 of the instant invention are **not** patentably distinct from US'852, since both claim **substantially same** subject matter.

In re claim 15, it would have been obvious to one of the ordinary skill in the art, at the time of the invention was made, to recognize that US'852 also implies that three hard mark films are made of different material since three hard mask films in US'852 have different etching rate (col. 10, lines 30-31).

Allowable Subject Matter

4. Claims 17 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art of record, Grill et al. to US 6,140,226, teach a related art, comprising:

- forming first level interconnections 4 overlying a substrate 2;

- consecutively forming first 7/8 and second 10/12 dielectric films on said first level interconnections 4 (Fig. 6A);
- consecutively forming first 66, second 68 and third 70 hard mask films on said second dielectric film 10/12 (Fig. 6A), said first 66 through third 70 hard mask films being insulating films;
- selectively etching said third hard mask film 70 to form a trench pattern on said third hard mask film 70, said trench pattern partially overlapping said through-hole pattern (Fig. 6E);
- selectively etching said first hard mask film 66 by using said second hard mask film as an etching mask to form said through-hole pattern on said first hard mask film 66 (Fig. 6F);
- selectively etching said second dielectric film 10/12 by using said first hard mask film 66 as an etching mask to form first through-holes in said second dielectric film 10/12 based on said through-hole pattern (Fig. 6G); and
- selectively etching said first dielectric film to form therein second through-holes communicated with respective said first through-holes for exposing part of said first level interconnections through said first and second through-holes.

In contrast, Grill et al. neither teach nor suggest selectively etching said *second and third* hard mask films to form a *through-hole pattern* on said second and third hard mask films; selectively etching said *first and second hard mask films* and a *top portion* of said *first dielectric film* by using said *third hard mask film as an etching mask* to form trenches in said first and second hard mask films and said top portion of said second dielectric film based on said trench

Art Unit: 2823

pattern (claim 14); forming a *first anti-reflection film* is formed on said *third* hard mask (claim 17); and forming a *second anti-reflection film* is formed on said *third* hard mask for filling the first through-hole pattern (claim 18).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hsien-ming Lee whose telephone number is 571-272-1863. The examiner can normally be reached on Tuesday-Thursday (8:00 ~ 6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Olik Chaudhuri can be reached on 571-272-1855. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hsien-ming Lee
Primary Examiner
Art Unit 2823

Dec. 15, 2004

HSIEN-MING LEE
PRIMARY EXAMINER

He
12/15/2004